plaintiff to the defendants at the commencement of the job and as to the balance of $2,315 being part of plaintiff's claim under paragraph 6 of the Statement of Claim (Page 9 of the record).

Appeal allowed.

Solicitors: *Cooma, Lau & Koh; Chan & Goh & Co.*

WILLIAM & JOHN (PTE.) LTD. v. ANGLO-DUTCH LIGHTERAGE CO. (1950) PTE. LTD.

[O.C.J. (Chua J.) August 11, 1982]
[Singapore – Civil Suit No. 594 of 1979]

Shipping Law – Carriage of goods by sea – Damage to goods – Claim for breach of contract and negligence against defendants.

Shipping Law – Bill of Lading – Whether defendants could invoke protection under bill of lading as agents of carrier.

The plaintiffs in this case were a trading company and the defendants were lighter owners. The plaintiffs were the owners and consignees of 4 cases of gas lighters and 1 case of gas refills shipped on board the vessel "Tobago" for carriage from Le Havre to Singapore and which were loaded in Singapore into the defendants' lighter No. SC 7773 for carriage from the vessel to the wharf for delivery to the plaintiffs.

The plaintiffs claimed against the defendants damages for breach of contract and negligence in the loading, handling, stowage, care, custody, carriage and discharge of the plaintiffs' 5 cases resulting in the damage of the said goods.

The defendants contended that they were the agents of the carrier that brought the 5 cases in question to Singapore and as such, they could not be held personally liable. The defendants relied on Article XII of the bill of lading.

Held, allowing the plaintiffs' claim: (1) the burden is on the defendants to establish that they were the servants, agents or independent contractors of the carrier;

(2) in this case the defendants had failed to establish that they were the servants, agents of independent contractors of the carrier;

(3) on the evidence the goods were despatched from the ship into the lighter in apparent good order and condition. However, when the goods were despatched from the lighter they were not in the same order and condition but were short-delivered and damaged. The loss and damage had occurred during the 5 days that the goods were in the defendants' lighter;

(4) the onus is on the defendants to show that the loss or damage did not happen in consequence of the neglect to use such care and diligence as a prudent careful man would exercise in relation to his own property. This, the defendants had failed to do;

(5) the plaintiffs had established their case and were entitled to succeed in this case.

Case referred to:

(1) *Midland Silicones Ltd.* v. *Scruttons Ltd* [1961] 2 Lloyd's Rep. 365; [1962] A.C. 446.

CIVIL SUIT.

Vivien Ang (Miss) for the plaintiffs.
Ajaib Hari Dass for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiffs are a trading company and the defendants are and were at all material times lighter owners, lighterage contractors, forwarding and distributing agents. The plaintiffs were the owners and/or consignees of four cases of gas lighters and one case of gas refills shipped on board the vessel "Tobago" for carriage from Le Havre to Singapore and which were loaded in Singapore into lighter No. SC 7773 of the defendants for carriage from the vessel to the wharf for delivery to the plaintiffs.

The plaintiffs' claim against the defendants is for damages for breach of contract and/or breach of duty and/or negligence in and about the loading, handling, stowage, care, custody, carriage and discharge of the plaintiffs' five cases resulting in the damage of four cases of gas lighters and one case of gas refills.

The facts are these. On or about July 26, 1974, the five cases of gas lighters and gas refills were shipped on board the vessel "Tobago" under two bills of lading numbered 76 and 77 issued by Compagnie Maritime des Chargeurs Reunis (CMCR) the owners of the vessel. The shippers were a French firm in Le Havre. The "Tobago" arrived in Singapore on September 3, 1974. The plaintiffs instructed Intermodular Transport Systems Division, a division of Cycle & Carriage Co. (Industrial) Pte. Ltd., to clear the cargo on their behalf. The plaintiffs' five cases were loaded on to the defendants' lighter No. SC 7773 on September 9, 1974. The cargo being a dangerous cargo was discharged at the explosive anchorage at Telok Ayer and delivered to Intermodular Transport Systems Division on September 13, 1974, and the five cases were brought to No. 13 Circular Road where the plaintiffs inspected the five cases. The plaintiffs noticed that the five cases were wet and some were broken. The plaintiffs then instructed Ritchie & Bisset to survey the goods.

The five cases were opened and the contents surveyed on September 14, 1974. Following the

survey the surveyor submitted two reports – Exhibits P1 and P2. The gas lighters had sustained various degrees of rustiness. A sample of the packing together with the rusty items were sent to a chemical laboratory which subsequently reported that sea water was the cause of the damage. Under bill of lading No. 76, 124 pieces were short-delivered, 626 pieces were totally damaged and 845 pieces were delivered partially damaged. Under bill of lading No. 77, 11 pieces were totally damaged and 19 pieces were partially damaged.

The case of the plaintiffs is that the defendants as bailees for reward failed to deliver the said cases of gas lighters and refills to the plaintiffs in the like order and condition as when they received them from the ship and accordingly the defendants were negligent, and/or in breach of their duty and/or contract and the plaintiffs are entitled to recover damages incurred to the extent of $18,223.17 that resulted from the defendants' negligence and breach.

The defendants contend that they were the agents of the carriers that brought the five cases in question to Singapore and as such they cannot be held personally liable. They argue that as such agents they are entitled to the same rights and immunities available to the carriers, in particular the immunity from action when an action of this nature is commenced one year after discharge of the cargo.

The clause in the bill of lading on which the defendants are relying on is Article XII which provides:

"All limitations of liability and other provisions herein contained shall inure not only to the benefit of the carrier, his agents, vessel's employees and other representatives but also to the benefit of any independent contractor performing services to the goods."

The burden is on the defendants to establish that they were the servants, agents or independent contractors of the carriers.

Optorg Co. Pte. Ltd. were at the material time the agents for CMCR, the owners of the "Tobago". Gulam Ghouse (DW2), the freight manager with Optorg, said in evidence that when the "Tobago" came to Singapore he instructed the defendants to collect the five cases from the vessel at the roads. He said that Optorg engaged the defendants on the general instruction of CMCR to engage lighterage whenever necessary on behalf of their principals; that those instructions were not in writing and that they were developed over the years during their relationship. He contends that the bills of lading Nos. 76 and 77 were liner terms bills of lading and as such the carriers were responsible to deliver the cargo to the consignees without additional charges. He says that it was the carrier's responsibility in this case to deliver the five cases to the consignees without any additional charges and that the lighterage fees would be payable by the carriers and that Optorg made payment for the lighterage.

The evidence of Gulam Ghouse is not supported by the documentary evidence before me. In a letter dated September 9, 1975, to the plaintiffs' solicitors (AB 34) Optorg said:

"We would advise that the consignment was discharged on to M/s. Anglo-Dutch Lighterage Co. (1950) Pte. Ltd. lighter on September 9, 1974 copy of the discharging record is attached for your reference.

Please note that all charges incurred for lighterage were paid by the consignee concerned."

And in Optorg's letter of April 1, 1976, to the plaintiffs' solicitors (AB 36) they said:

"We do not have a copy of the lighterage contractors' receipt as the said lighterage company was engaged by the consignee concerned."

Gulam Ghouse said that he overlooked to check those two letters and that those statements were not correct. It is most unlikely that such important letters relating to potential claims against them could be written by clerks without being checked and it is inconceivable that this was an error which could have gone unnoticed for several years and no attempts were made to clarify the situation despite repeated queries from the plaintiffs until the date of the trial.

Article II of the bill of lading clearly states that such expenses are to be borne by the consignees. Gulam Ghouse says that Article II does not apply as the bill of lading is in liner terms and that CMCR provides only liner services. I am not satisfied that the bill of lading is in liner terms.

There is no evidence that the defendants were paid by Optorg. I find that it was the consignees who paid the defendants in accordance with Article II of the bill of lading.

The defendants have failed to establish that they were the servants, agents or independent contractors of the carrier CMCR.

Even if the defendants were agents or independent contractors of the carriers, the defendants cannot rely on the terms of the bill of lading as none of the four factual prerequisites laid down by Lord Reid in *Midland Silicones Ltd.* v. *Scruttons Ltd.*[1] are met in this case.

Lord Reid in his judgment said (p. 374):

"I can see a possibility of success of the agency argument if (first) the bill of lading makes it clear that the stevedore is intended to be protected by the provisions in it which limit liability, (secondly) the bill of lading makes it clear that the carrier, in addition to contracting for these provisions on his own behalf, is also contracting as agent for the stevedore that these provisions should apply to the stevedore, (thirdly) the carrier has authority from the stevedore to do that, or perhaps later ratification by the stevedore would suffice, and (fourthly) that any difficulties about consideration moving from the stevedore were overcome. And then to affect the consignee it would be necessary to show that the provisions of the Bills of Lading Act, 1855, apply."

The next question at issue is whether the loss and damage to the goods arose out of the defendants' negligence.

The fact that the goods were discharged into the defendants' lighter is not in dispute. I find on the evidence that the goods were discharged from the ship into the lighter in apparent good order and condition. I also find that when the goods were discharged from the lighter they were not in the same order and condition but were short-delivered and damaged to the extent specified in the Survey Reports of Messrs. Ritchie & Bisset (Exhibits P1 and P2). There is no doubt that the loss and damage occurred during the five days that the goods were in the defendants' lighter.

The onus is on the defendants to show that the loss or damage did not happen in consequence of their neglect to use such care and diligence as a prudent or careful man would exercise in relation to his own property. This the defendants have failed to do.

The plaintiffs have established their case and are entitled to succeed in this case for the full amount. There will be judgment for the plaintiffs in the sum of $18,223.17 and costs.

Claim allowed.

Solicitors: *Godwin & Co.; Netto, Low & Partners.*

MALAYSIAN REPORTS

JAYARAMAN & ORS. v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Abdul Hamid & Ajaib Singh JJ.)
May 3 & June 10, 1982]
[Kuala Lumpur – Federal Court Criminal Reference No. 4 of 1981]

Criminal Law and Procedure – Charge of culpable homicide not amounting to murder – What constitutes arrest – Oral statement made by accused before his arrest to a police officer of or above rank of Inspector – Whether admissible – Circumstantial evidence – Whether burden on prosecution heavier than in case of direct evidence – Criminal Procedure Code, ss. 15, 112 & 113.

Evidence – Circumstantial Evidence – Whether burden on prosecution heavier than in case of direct evidence – Statement made by an accused to police officer – When admissible – Criminal Procedure Code, ss. 112 & 113.

In this case the appellants had been convicted of the offence of culpable homicide not amounting to murder and sentenced to various terms of imprisonment. Their appeals to the High Court were dismissed – See [1982] 2 M.L.J. 273. On their application the learned Judge reserved for the decision of the Federal Court the following questions of law of public interest which had arisen in the course of the trial and the determination of which by the learned judge had affected the event of the appeal:

1. Whether it is correct law that in dealing with a case which relies on circumstantial evidence it does not make any difference if a court finds that in considering all the evidence it is satisfied beyond reasonable doubt that the accused is guilty of the offence *or* if the court says that the evidence points only to the irresistible conclusion that the accused is guilty.
2. Whether compliance by any person to a request by a police officer not to leave a prescribed place constitutes submission to custody by that person within the meaning of section 15 of the Criminal Procedure Code.
3. Whether an oral statement made by a person before his arrest to a police officer of or above the rank of Inspector can be admitted as evidence against him where such statement has not been reduced into writing.

Held: (1) in a case tried without a jury and depending on circumstantial evidence, it is enough for the trial judge to remember only that the prosecution need prove its case beyond reasonable doubt and failure by him to also say that the circumstances are not only consistent with the accused having committed the crime but also such that they are inconsistent with any other reasonable explanation is not fatal. In other words, in a case depending on circumstantial evidence it is enough if the court merely says that it is satisfied of the accused's guilt beyond reasonable doubt, without further saying that the facts proved irresistibly point to one and only one conclusion, namely the accused's guilt;

(2) the answer to the second question referred to the court in this case depends on the facts of each individual case, but on the facts in the case it could not be said that the applicants had been arrested by the corporal when he told them to wait and not to leave the temple, for he had merely stopped them to make inquiries into the attack on the temple;

(4) an oral statement made by a person before his arrest to a police officer of or above the rank of Inspector can be admitted in evidence against him where the statement has not been reduced to writing, provided there is a reasonable explanation for the failure.

Cases referred to:–

(1) *McGreevy* v. *Director of Public Prosecutions* [1973] 1 W.L.R. 276; [1973] 1 All E.R. 503.
(2) *Kartar Singh & Anor.* v. *Public Prosecutor* [1952] M.L.J. 85.
(3) *Idris* v. *Public Prosecutor* [1960] M.L.J. 296.
(4) *Chan Chwen Kong* v. *Public Prosecutor* [1962] M.L.J. 307.
(5) *Sunny Ang* v. *Public Prosecutor* [1966] 2 M.L.J. 195.
(6) *Karam Singh* v. *Public Prosecutor* [1967] 2 M.L.J. 25.
(7) *Chang Kim Siong* v. *Public Prosecutor* [1968] 1 M.L.J. 36.